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IN THE

Supreme Court of the United States

October Term, 1975

No. 74-1632

E. F. McCOLE, Official Court Reporter, and the WASHINGTON SHORTHAND REPORTERS ASSOCIATION,
Petitioner,

DENA BIDSTRUP,
Plaintiff-Respondent,

v.

CONVES-CARE, INC., d/b/a EVERGREEN CONVALESCENT CENTER, a Washington corporation, and HARTFORD INSURANCE GROUP, a Foreign corporation,
Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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CONVES-CARE, INC., d/b/a EVERGREEN CONVALESCENT CENTER, a Washington corporation, and HARTFORD INSURANCE GROUP, a Foreign corporation,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioners pray that a Writ of Certiorari issue to review the decree of the Supreme Court of the State of Washington entered in the above-entitled case on March 21, 1975.

OPINIONS BELOW

The Superior Court of the State of Washington in King County issued an order in the above-entitled cause authorizing the plaintiff/appellant to proceed on appeal to the Court of Appeals for the State of Washington in forma pauperis, and directing that the official court re-

porter provide, without cost, to the appellant a transcript of the proceedings in the trial court. The Superior Court order is printed in the appendix hereto at page A-1. Petitioners joined in a motion with defendants/respondents before the Washington Court of Appeals seeking a reversal of the trial court's order on the basis that the directive to the court reporter was without authority and prejudicial to his Constitutional rights. The Court of Appeals denied the motion, a copy of the order denying motion being included in the appendix at page A-2. Thereafter, petitioners filed a petition for a Writ of Certiorari to the Supreme Court of the State of Washington seeking review of the order of the trial court and the Court of Appeals, again asserting that such orders were in excess of authority and violative of petitioner's Constitutional rights. The Washington Supreme summarily denied the petition. A letter advising petitioners of the Washington Supreme Court's notation order is included in the appendix at page A-3.

JURISDICTION

Supreme Court of the State of Washington issued its order denying petitioners' petition for Writ of Certiorari on March 21, 1975. The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the courts of the State of Washington in directing an official court reporter to provide a free transcript of proceedings in a civil trial to an indigent appellant deprive the court reporter of his property without due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution?

2. Whether the courts of the State of Washington in directing an official court reporter to provide a free transcript of proceedings in a civil trial to an indigent appellant deprive the court reporter of his property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution?

3. Whether the courts of the State of Washington can direct an official court reporter to provide a free transcript of proceedings in a civil trial to an indigent appellant without providing the court reporter with notice and an opportunity to be heard as required under the due process clause of the Fourteenth Amendment?

PROVISIONS OF THE UNITED STATES CONSTITUTION INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

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ties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Dena Bidstrup brought an action against Conves-Care, Inc. and others in the Washington Superior Court for King County. At the conclusion of trial a verdict was rendered in favor of defendants, and the trial judge denied the plaintiff's motion for a judgment n.o.v. or alternatively for a new trial by order entered November 25, 1974. Plaintiff filed a notice of appeal seeking review of the trial court's order of November 25. On January 3, 1975, Judge Horton Smith entered an order allowing plaintiff/appellant to proceed on appeal in forma pauperis, and further ordered that a statement of facts on appeal (transcript of proceedings) be provided to her without cost. The trial court's order directed that the administrator of court reporters provide plaintiff/appellant with the cost free transcript. The trial court further directed that, although no statute or procedure provided for the reimbursement of the court reporter for his services under such cicumstances, the court reporter could submit a claim to the state legislature in the hopes of being paid.

Subsequently defendants below scheduled a motion before the Washington Court of Appeals seeking to vacate the trial court's findings of fact and conclusions of law and order allowing plaintiff to proceed on appeal in forma pauperis. Petitioners E. F. McCole and the Washington Shorthand Reporters Association ("Association") sought and were granted leave to intervene in that motion for the purpose of reversing the trial court's order providing

appellant with a cost free transcript or modifying the order to provide compensation for the court reporter. E. F. McCole was the court reporter for the Bidstrup case and was to bear the full financial burden of providing the transcript under the trial court's order. The Association, representing Mr. McCole and other court reporters similarly situated, sought to resolve the procedural and constitutional issues surrounding the trial court's order depriving the court reporter just compensation for his services in indigent civil appeals.

After a hearing on the motion on January 31, 1975, the Chief Judge for the Court of Appeals, Division I, entered an order denying the motion to vacate Superior Court's January 3 directive. The sole basis for this order was the conclusion that this matter had been addressed by the Washington Supreme Court in *Iverson v. Marine Bancorporation*, 83 Wn.2d 163, 517 P.2d 197 (1973), and that the Court of Appeals was bound by that decision.

After receiving notification of the Court of Appeal's decision petitioners filed a Petition for Writ of Certiorari in the Washington Supreme Court to review the present order and to reconsider the incomplete procedure formulated by the *Iverson* decision. The Chief Justice for the Washington Supreme Court directed that the matter be heard on the motion calendar of the Supreme Court, before a panel of five of the Justices. On March 21, 1975, oral argument was presented to the court. Thereafter, the Washington Supreme Court entered a notation order stating simply that the petition was denied and that the argument of the court reporter was premature.

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REASON FOR GRANTING WRIT AND ARGUMENT

A. Reasons for Granting the Writ

1. The official court reporters of the State of Washington are engaged in the occupation and business of providing their services in transcribing, for a fee, the proceedings in the trial court. The right to freely engage in a lawful business and occupation is a right guaranteed by the United States Constitution. The orders of the Washington courts have directly interfered with that right, by directing that the court reporter gratuiously provide his services and pay expenses with his own funds in order to provide transcripts of proceedings to indigents in civil appeals. The Washington courts have ordered the court reporter to provide his otherwise compensated services without in any way providing for or assuring payment therefor. This procedure deprives court reporter of his property without due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

2. The procedure described above also deprives the court reporter of his property without just compensation, as prohibited by the Fifth and Fourteenth Amendments to the United States Constitution.

3. In none of the cases where the Washington courts have directed or ordered the court reporter to provide free transcripts of proceedings, has the court reporter been afforded notice or given an opportunity to present arguments as to why his time, services and personal funds should not be utilized to provide free transcripts in civil appeals. Such a failure to provide adequate notice and

an opportunity to be heard denies the court reporter fundamental procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

B. Argument

Official Court Reporters Are Independent Contractors And In Private Business

Under the statutory scheme of the State of Washington court reporters are employed by the state trial courts for the purpose of attending proceedings and taking shorthand notes. Court reporters hired for this purpose are deemed "Official" court reporters. However, the scope of such official employment is limited, by statute, to such activities. Thereafter, if a transcript of proceedings is desired by any litigant for the prosecution of an appeal or for any other purpose such litigant must make independent contractual arrangements with the court reporter. It is by this means that the court reporter earns his fees and covers his expenses, and as such is engaged in an independent business and occupation.

The official duties of a Court Reporter are specifically prescribed by statute. RCW 2.32.200 provides as follows:

> "2.32.200 *Duties of official reporter.* It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.320 to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes

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> of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had."

By this statute the Washington legislature has limited the scope of employment of the official court reporter to attending such proceedings as he is directed and taking shorthand notes thereof. No statute provides that the court reporter is to provide printed transcripts as part of his duties. Preparation of printed transcripts is completely separate from the reporter's salaried official duties, and is independently contracted for by the court reporter with the party requesting the transcript. An official court reporter is, in fact, guaranteed that he will be compensated for his services and expenses if a printed transcript is requested by a party litigant as part of an appeal. Washington statute, RCW 2.32.240, provides that if a transcript is ordered by a party the reporter's "fee shall be paid forthwith by the party ordering the same" and in cases where a criminal matter is appealed by an indigent the "transcript fee therefore shall be paid by the state."

The distinction between the court reporter's salaried duties and his independent business also reflected in the appellant rules adopted by the Washington Supreme Court. In the course of a regular appeal the appellant is to order a printed transcript "and make arrangements with the court reporter for the payment of the cost thereof." Court of Appeals Rule on Appeal 34; Rules on Appeal I-34. This same requirement is prescribed by Rule 33(5) of the Washington Court of Appeals and Washington Supreme Court, and the appealing party is further required

to file evidence of satisfactory payment for such transcript before the appeal will be heard. (See Appendix)

Thus, the "official" duties of the court reporter are limited by statute, and do not encompass providing free printed transcripts. The court reporter acts as an independent contractor, contracting his services to any litigating party seeking a transcript for appeal. A court reporter expends much time in transcribing his notes for the preparation of such transcripts. The court reporter also pays out-of-pocket expenses covering supplies and, as is generally the case, hiring a typist to type his transcribed notes. It is to compensate for this time and expense that the court reporter is assured payment by statute and court rule.

Order Directing Court Reporter to Provide Free Transcript Is Arbitrary

The order entered by the Washington trial court, and not corrected by the Washington Court of Appeals or the Washington Supreme Court, directly contravenes the statutory and procedural rules outlined above. Because of the indigency of the appellant the Washington courts believe they have the authority to compel a court reporter to provide free transcripts in civil appeals, even though it requires the court reporter to provide services without assurance of compensation. However, such an order directing gratuitous labor by the court reporter is arbitrary and without justification.

The Washington trial court and the Court of Appeals, and inferentially the Washington Supreme Court, based their conclusion that the court had proper authority to direct the court reporter to provide a free transcript to

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an indigent civil appellant upon the decision of the Washington Supreme Court in *Iverson v. Marine Bancorporation*, 83 Wn.2d 163, 517 P.2d 197 (1973). In that case appellant Iverson petitioned the Washington Supreme Court to allow her to proceed in forma pauperis on her civil appeal, and asked the court to waive her filing fees, cost bond, and other costs on appeal. The Washington Supreme Court held that the courts of the State of Washington should be accessible to all citizens, and that under the court's power to fashion judicial procedure as justice requires it could waive fees, costs, and other requirements to appeal. In formulating this policy the Washington Supreme Court totally disregarded the right of the court reporter to compensation and summarily directed that the court reporter in that case to furnish appellant a free printed transcript, allowing the court reporter to seek whatever payment he could from the state legislature. The Washington Court stated:

> "We note also that there is not apparent funding available for the furnishing of a statement of facts which the trial court has determined is absolutely necessary to process the instant appeal. We therefore order that a statement of facts be furnished by the official reporter in this case, and the reporter is authorized to file a claim with the legislature for reimbursement." 83 Wn.2d at 168, 577 P.2d at 200.

It is on the basis of this order, entered without serious consideration of the court reporter's rights, that the trial court and the Court of Appeals in the present case directed the petitioning court reporter to supply a free printed transcript to Dena Bidstrup.

Conceding for the sake of argument that the Washington courts have the implied power to waive procedural

requirements as a means of making the appellant process available to all, the present order goes far beyond that authority. Instead, the trial court's order compels the court reporter, an unrelated third party, to provide services *pro gratis* by supplying a free transcript of proceedings. This clearly goes beyond merely lifting or waiving certain procedural requirements to make courts available to the indigent. Instead, the Washington courts have directed the third person to perform affirmative acts for the benefit of an unrelated indigent appellant. This is clearly distinguishable from the court's ability to waive procedural conditions precedent to appeals such as waiving the payment of costs or fees. This distinction was stressed by the Colorado Supreme Court in *Almarez v. Carpenter,* 173 Colo. 320, 477 P.2d 792, 794 (1970):

> "The law provides that if a litigant desires a transcript he must make his own arrangements with the reporter. C.A.R. 10(b). [See comparable statutes and rules above] The preparation of a transcript by a reporter of his notes is a service which is not covered by his salary. Hence, the fees for such services are not payable to the court and the court cannot waive them.
>
> "There is a fundamental difference between permitting the court to waive costs due it and authorizing the court to order the state to assume the obligation of a litigant to a court reporter for preparing a transcript for purposes of appeal."

This fundamental distinction was ignored by the Washington courts. Instead, under the guise of procedural administration the Washington courts have ordered the court reporter to supply the printed transcript without any assurance of payment.

It should also be noted that the Washington court in *Iverson* did *not* find the indigent civil appellant was con-

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stitutionally entitled to have her costs and fees waived so that she could have access to the appellant courts. Rather, it seems very clear that the federal Constitution does not mandate such a policy. *Ortwein v. Schwab*, 410 U.S. 656 (1973); *United States v. Kras*, 409 U.S. 434 (1973); *Hill v. State of Michigan*, 488 F.2d 609 (6th Cir. 1973), *cert. denied*, 416 U.S. 973.

The procedure suggested by the *Iverson* decision and implemented in this case is an arbitrary procedure, formulated without accounting for all persons affected. This procedure is not an appropriate exercise of procedural control, is not for the purpose of protecting a fundamental constitutional right, is without statutory mandate, and is in derivation of the statutes and court rules governing court reporter's right to payment.

Order Requiring the Court Reporter to Provide Free Transcripts Deprives Him of Property Without Due Process

But while the procedure outlined by the Washington Supreme Court in *Iverson* may be arbitrary and ill conceived, the heart of the issue is the fact it violates the constitutional rights of the court reporters. First, and fundamentally, it deprives the court reporter of his property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

It has been held on numerous occasions that the right to engage in a chosen profession or occupation is a protected right under the United States Constitution. A state is thus prevented from arbitrarily interfering with or placing unnecessary restrictions on the reasonable conduct of a

lawful business or profession. The right to freely engage in a chosen profession is a guaranteed property right and entitled to the full protection of the federal constitution. *Liggett Company v. Baldridge,* 278 U.S. 105 (1928); *Duplex Printing Press Company, v. Deering,* 254 U.S. 443 (1921); *Truax v. Corrigan,* 257 U.S. 312 (1921); *Meyer v. Nebraska,* 262 U.S. 390 (1923).

The Supreme Court has held that the right to freely engage in a chosen occupation is guaranteed under the fifth amendment. In *Greene v. McElroy,* 360 U.S. 474, 492 (1959), the Court stated:

> "The right to hold specific employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment."

This principle was reaffirmed in *United States v. Robel,* 389 U.S. 258, 265, footnote 11 (1967).

This constitutional protection is applied to state action and is fully guaranteed by the Fourteenth Amendment. It has long been established that the state cannot arbitrarily interfere with a person's occupation by formulating unnecessary and unreasonable regulations. This protection was announced in *New State Ice Company v. Liebmann,* 285 U.S. 262, 278 (1932):

> "Plainly a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the 14th Amendment. Under that amendment, nothing is more clearly settled than that it is beyond the power of a state, "under the guise of protecting the public, arbitrarily [to] interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them." *Jay Burns Baking Co. v. Bryan,*

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264 U.S. 504, 513, 68 L.Ed. 813, 826, 32 A.L.R. 661, 44 S. Ct. 412, and authorities cited; *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 113, 73 L.Ed. 204, 208, 49 S.Ct. 57.

It is abundantly clear that the court reporter's constitutional right to freely engage in his profession has been arbitrarily and unreasonably restrained by the orders entered by the Washington courts. Court reporters pursue their profession, as authorized by the Washington statutes and court rules, by contracting for their services for providing printed transcripts to party litigants. The court reporter charges a necessary fee and makes a profit therefrom. The present court order arbitrarily denies the court reporter his right to conduct his business in a manner he chooses, by compelling him to work gratuitously without assurance of recompense.

Nor does simply referring the court reporter to the state legislature in the hopes that the legislature will render payment correct this error. The state legislature is under no compulsion to authorize payments for such services. This discrepancy was noted by the dissent in the *Iverson* case, where it was stated:

> "Another problem arises: If the legislature does not pay this fee, then the money will have to come from the court reporter in the form of free professional services and work. The court's act of charity thus includes a free statement of facts at public expense for wholly private purposes, but failing accomplishment will deprive the court reporter of his property without due process of law by directing him to do work he values at $1.50 per page, without payment. If the legislature does not pay this fee—which it is not, in my opinion, obliged to do—it is the court reporter who will be performing the charity and not this court." 83 Wn.2d at 170, 517 P.2d at 200-201.

This problem, unfortunately, was completely ignored by the majority in the *Iverson* case, and in the present case as well. Thus, there is no guarantee that the court reporter will ever be paid.

Furthermore, even if payment is eventually authorized by the state legislature, there is no assurance that the payment will be the full amount the court reporter sought and otherwise would be entitled to. Due to budgetary and other problems the state legislature could be expected to discount the fee owed the court reporter. There is also no guarantee that the payment would be received within a reasonable time. Any potential approval of the court reporter's bill may not be forthcoming for several months, or even years, after the services have been performed, thus denying the court reporter the use of his compensation and any interest on the unpaid balance. Nor should the court reporter be faced with the burden of having (1) to prepare and submit a bill to the legislature and (2) appear to provide any testimony the legislature may deem necessary. Under the statutes and court rules cited above, the court reporter would ordinarily be assured of payment prior to the rendering of the services. The procedure suggested by the Washington courts requires the court reporter to expend additional time and expense to recoup his fee, all contrary to the statutorially prescribed scheme.

The present order is completely contrary to the constitutional protections against the deprivation of property rights without due process. The order requires the court reporter to perform his business services but does not make definite provision for his payment. Thus the order should be reversed.

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Court Reporter Deprived of Property Without Just Compensation

Having determined that the right to engage in a business and occupation is a property right subject to the protection of the United States Constitution, it follows that the Washington court order commandeering the court reporter's services constitutes a taking of property without just compensation. Unreasonably restricting the court reporter in his occupational affairs certainly constitutes a violation of his due process rights. But the Washington courts have gone further and have required the court reporter to perform his services for what the courts consider to be the public good, i.e., supplying free transcripts of proceedings to indigents in civil appeals. Directing the court reporter to so act falls within the prohibition against depriving a citizen of property without just compensation.

The Fifth Amendment to the United States Constitution specifically provides that "nor shall private property be taken for public use, without just compensation." The provisions of the Fifth Amendment, are, of course, applicable to the states through the Fourteenth Amendment. *Hibben v. Smith,* 191 U.S. 325 (1903). Thus the states are equally prohibited from depriving a person of his property without compensating him therefor. Inasmuch as the court reporter's business and occupational rights are property rights within the meaning of the Fifth and Fourteenth Amendments, the Washington court order, by directing the court reporter to provide transcripts without guaranteeing or specifically providing for compensation, clearly constitutes a deprivation of the court reporter's property.

The purpose behind the Fifth Amendment's guarantee

is to specifically prevent such acts. As the Supreme Court stated in *Armstrong v. United States,* 364 U.S. 40, 49 (1960):

> "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar government from forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole."

See also *National Board of Y.M.C.A. v. United States,* 395 U.S. 85, 89 (1969).

Here the Washington courts have determined that the public interest would be served by allowing indigent civil appellants to prosecute appeals without paying the costs and fees involved. However, to implement that policy the Washington courts have forced the court reporter to bear individually the cost of preparing the printed transcripts. Thus, even though it is generally considered that costs in civil cases should be borne by the individual litigants, the Washington courts, having found a public interest in this instance, have placed the burden not on the public but instead on the individual court reporter. In doing so, without specifically providing for just compensation, the Washington courts have violated both the word and the spirit of the fifth amendment.

The Court Reporter Has Been Denied Procedural Due Process

It is ingrained in the concept of due process of law that a party be given adequate notice and an opportunity to be heard where an adjudication or hearing is to affect that party. As was clearly established by the Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313-314 (1949):

> "There can be no doubt that at a minimum due process requires that the deprivation of life, liberty or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case. . . . An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

More recently the Court in *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) quoted with approval *Grannis v. Ordean*, 234, U.S. 385, 394 (1914):

> "The fundamental requisite of due process is the opportunity to be heard."

When the trial court issued its order in the present case the court reporter was given no notice of the proceeding nor afforded an opportunity to object to being compelled to provide services without assurance of compensation. This, on its face, constitutes an abridgement of the court reporter's rights to procedural due process. This is a classic example of the state court ordering affirmative acts by a third person not a party before it and making adjudications affecting that party without that party being advised and given an opportunity to be heard. If procedural due process as guaranteed under the Constitution is to have any efficacy at all, this procedure of ordering the court reporter to perform free services without being heard as exemplified by the order in this case must be repudiated.

Court Reporter Is Not "Officer of the Court" Subject to Court's Supervision

It cannot be argued than an official court reporter is an officer of the court and thus, subject to the court's super-

vision and control for purposes of implementing judicial policy. Instead, a court reporter is merely an employee of the Washington courts for a specific purpose. Under such circumstances the court reporter is not totally within the supervision of the court.

As outlined above, the position and function of the court reporter are statutorily defined. A court reporter is appointed by the trial court for the purpose of attending proceedings and taking notes thereof. There is nothing in the statutes, nor in any court rule, which makes the court reporter more than an employee hired for these specific purposes.

It has been repeatedly held that a court reporter is merely an employee and is not an officer or official of the court. *Robbin v. Brewer*, 236 So.2d 448 (Fla. App. 1970); *Harris County v. Hunt*, 388 S.W.2d 459 (Tex. App. 1965); *Tom Green County v. Proffitt*, 195 S.W.2d 845 (Tex. App. 1946); *Stone v. State ex rel. Strain*, 18 Ala. App. 228, 89 So. 824 (1921). The reason behind this conclusion is that a court reporter's responsibilities are defined and do not include representing the state or the court in any official capacity. Thus, while an attorney, as an officer of the court, acts as an extension and on behalf of the court, the court reporter lacks this ability and remains only an employee. While the court may direct an employee to perform services within the scope of employment, such employee may not be compelled to perform services outside the scope of employment simply by deeming him an officer of the court.

Nor can the position of an official court reporter be analogized to the position of an attorney While an attorney may be deemed an officer of the court and subject to

performing services pursuant to court order, a court reporter stands in quite different shoes. The fundamental difference is that an attorney is licensed to practice before the court and thus becomes an officer of the court. As a condition to practice it has long been held that an attorney, as part of the tradition of the profession, expects to represent parties before the court for little or no compensation. *United States v. Dillon*, 346 F.2d 633, 635 (9th Cir. 1965); *Tyler v. Lark*, 472 F.2d 1077, 1079 (8th Cir. 1973).

Thus, while an attorney is expected to undertake such obligations as a condition to becoming a practicing attorney, no such conditions are placed upon the court reporter. Because of this distinction between attorneys and court reporters, it cannot be held that a court reporter is an officer of the court similar to an attorney. *Lee v. Habib*, 424 F.2d 891, 903 (10th Cir. 1970).

Even if there was some basis for comparing the positions of the court reporter and an attorney as officers of the court there would still be no justification for compelling the court reporter to provide free services. Neither courts of the State of Washington, nor the courts of any other jurisdiction, have seen fit to compel an attorney to represent without assurance of compensation an indigent in the prosecution of an appeal in a civil case. Thus, the Washington courts are seeking to compel the court reporter to perform services which the court has not deemed appropriate for an attorney, whose status as an officer of the court is unquestioned.

The status of a court reporter is defined by statutes. The court reporter is not an officer of the court for purposes of supplying free transcripts to indigent civil appellants, and the court order so directing cannot stand.

CONCLUSION

It is respectively submitted that the order of the Washington Superior Court directing that the court reporter provide free transcripts to the indigent appellant in this civil action violates the Constitutional rights of the court reporter and that review of the procedure prescribed by the Washington Supreme Court is warranted.

The Writ of Certiorari should issue.

Respectfully submitted,

HELSELL, FETTERMAN,
MARTIN, TODD & HOKANSON

PHILLIP D. NOBLE
Of Counsel

WILLIAM A. HELSELL
Attorney for Petitioners
E. F. McCole and
Washington Shorthand
Reporters Assn.

ED THROUGH

APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DENA BIDSTRUP, *Plaintiff*, v. CONVES-CARE, INC., et al., *Defendants.*	Filed '75 Jan. 3 AM 9:49 No. 764640 ORDER DIRECTING ADMINISTRATOR OF COURT REPORTERS TO FURNISH STATEMENT OF FACTS TO PLAINTIFF-APPELLANT DENA BIDSTRUP

Pursuant to the Findings of Fact and Conclusion of Law entered herein, and in accordance with the authorities cited in the case of *Iverson v. Marine Bancorporation*, 83 Wn.2d 163 (1973) it is hereby

ORDERED that the Administrator of Court Reporters of this Court, Lewis P. Stephenson, Jr., furnish the appellant, Dena Bidstrup, herein, a transcript and statement of facts without cost, and

FURTHER ORDERED that a claim for the cost of said statement of facts be filed with the Legislature of the State of Washington for reimbursement.

DONE IN OPEN COURT this 3rd day of January, 1975.

s/ HORTON SMITH
Judge

Presented by:

s/ M. GERALD HERMAN
M. Gerald Herman of
Beaudry, Neeley & Herman
Attorneys for Dena Bidstrup

Order re Statement of Facts

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DENA BIDSTRUP, *Appellant,* v. CONVES-CARE, INC., et al., *Respondents.*	No. 3495-I ORDER DENYING MOTION

This matter coming on regularly to be heard before a panel of this court upon the respondents' motion to vacate a certain order entered in cause No. 764640, Superior Court for King County, directing the administrator of the court reporters to furnish a statement of facts to appellant and to vacate the findings of fact and conclusions of law entered with said order, respondents appearing by Messrs. Lycette, Diamond & Sylvester, John T. Petrie, of counsel; appellant appearing by Messrs. Beaudry, Neeley & Herman, Saul Herman, of counsel; and *amicus curiae* appearing by Messrs. Helsell, Paul, Fetterman, Todd & Hokanson, Phillip D. Noble, of counsel; and

IT APPEARING that said findings of fact and conclusions of law fulfill the requirements of the criteria contained in the guidelines established by the Supreme Court of Washington in *Iverson v. Marine Bancorporation*, 83 Wn.2d 163, 517 P.2d 197 (1973), for the public funding of an appeal, and

IT APPEARING that the decision in *Iverson v. Marine Bancorporation* is controlling in the premises, and the court being fully advised; Now, therefore, it is hereby

ORDERED that the said motion of the respondents be, and the same hereby is, denied.

Done this 31st day of January, 1975.

s/ WARD WILLIAMS
Chief Judge

A-3

THE SUPREME COURT
State of Washington
Olympia
98504

WILLIAM M. LOWRY
Clerk

REGINALD N. SHRIVER
Deputy

April 9, 1975

Helsell, Fetterman, Martin,
Todd & Hokanson
Mr. Phillip D. Noble
P.O. Box 21846
Seattle, Washington 98111

Dear Mr. Noble:

Re: No. 43633—Bidstrup v. Conves-Care, Inc., et al.

In response to your letter of April 7, 1975, please be advised that the following notation order was entered by the Court on March 21, 1975:

> "Denied. The argument of the Court Reporter is premature until action by the legislature on the Court Reporter's claim.
>
> /s/CHARLES F. STAFFORD
> Chief Justice"

Very truly yours,

/s/REGINALD N. SHRIVER
Reginald N. Shriver
Deputy Clerk

RNS:krt

Revised Code of Washington:

"2.32.240 Transcript of testimony—Fee—Forma pauperis

(1) When a record has been taken in any case as provided in RCW 2.32.180 through 2.32.320, if the court, or either party to the suit or action, or his attorney, request a transcript, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate transcript of the testimony and other proceedings, which shall, when certified to as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter for making such transcript shall be fixed in accordance with costs as allowed in cost bills in civil cases by the supreme court of the state of Washington, and when such transcript is ordered by any party to any suit or action, said fee shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of RCW 2.32.180 through 2.32.320 the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: *Provided,* That when the defendant in any criminal case, a juvenile in any case determining such juvenile to be a delinquent or incorrigible child under RCW 13.04.010, or petitioner for a writ of habeas corpus has been judicially determined to have a constitutional right to a free transcript and to be unable by reason of poverty to pay for such transcript, the court may order said transcript to be made by the official reporter, which transcript fee therefor shall be paid by the state upon submission of appropriate vouchers to the clerk of the supreme court."

Washington Court of Appeals Rules on Appeal 34 (in pertinent part):

"RULE 34. STATEMENT OF FACTS—TIME FOR ORDERING, SERVING, AND FILING—CERTIFICATION

"(1) Within forty-five (45) days after filing notice of appeal, unless the chief judge shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof."

Washingon Supreme Court Rules on Appeal 34 (in pertinent part):

"RULE I-34. STATEMENT OF FACTS—TIME FOR ORDERING, SERVING, AND FILING—CERTIFICATION

"(1) Within forty-five (45) days after filing notice of appeal, unless the chief justice shall have previously ordered otherwise, for good cause shown, the appellant shall order the statement of facts and make arrangements with the court reporter for the payment of the cost thereof."

Washington Court of Appeals Rules on Appeal 33 (5):

"RULE 33. NOTICE OF APPEAL AND CROSS-APPEAL IN CIVIL CASES—ORDERING STATEMENT OF FACTS AND TRANSCRIPT

"(5) Unless the chief judge shall previously order otherwise, the appellant must, within 45 days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the court of appeals pursuant to CAROA 44. Evidence that these arrangements have been made shall be in the form of a statement signed by the at-

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torney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the court of appeals within 55 days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk."

Washington Supreme Court Rules on Appeal 33 (5):

"RULE I-33. NOTICE OF APPEAL AND CROSS-APPEAL IN CIVIL CASES—ORDERING STATEMENT OF FACTS AND TRANSCRIPT

"(5) Unless the chief justice shall previously order otherwise, the appellant must, within 45 days after filing notice of appeal, make arrangements with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and also make arrangements with the clerk of the superior court for the transcript which is to be filed with the supreme court pursuant to ROA I-44. Evidence that these arrangements have been made shall be in the form of a statement signed by the attorney for appellant or by the court reporter if there be no counsel of record. The above statement shall be filed with the clerk of the supreme court within 55 days after the filing of the notice of appeal. Failure to comply with provisions of this paragraph may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk."